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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/457,466	12/08/1999	BRAD HANDLER	003801.P004	7716

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EXAMINER

ELISCA, PIERRE E

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/457,466

Applicant(s)

HANDLER, BRAD

Examiner

Pierre E. Elisca

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This Office action is in response to Applicant's Appeal/Brief filed on 10/1/2004.
2. Regarding the status of the claims in the instant application, the Examiner has found a non-statutory subject matter in claim 3. Thus, the finality of the prior Office action has been withdrawn and new rejection follows. The Examiner regrets the delayed process of the application. Accordingly, claims 3-24 remain pending in the application.

### ***Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 3 is rejected under 35 U.S.C. 101 because it is directed to non-statutory subject matter, specifically, as directed to an abstract idea.

Claim 3 recites prior to a live, in-person auction which do not define any structural and functional interrelationships with a general purpose computer for permitting the claimed functions to be realized. In contrast, a statutory claim would define structural and functional interrelationships between data structures or functional parts and a computer which permit the data functions to be realized. Thus, the claim is rejected as being non-statutory as described above.

Applicant is advised to add a computer or a processor into claim 3.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-24 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Fisher et al. (U.S. Pat. No. 6,243,691) and Cooper ("Going going gone, Tradition gives way to technology, British Telecom World, March 1990) in view of Biais, Bruno et al. An empirical analysis of the limit order book and the order flow in the Paris Bourse December 1995.

As per claims 3-6 and 7-24 Fisher substantially discloses a system/method for conducting a multi-person (or in-person), interactive auction, the method comprising the steps of:

updating bidding information associated with an item in an online environment to reflect a current bid associated with the item, in person auction (see., col 8, lines 39-55, specifically wherein it is stated that updating the bid list for open items. The bid manager begins by checking if there are more merchandise items to be processed. If such items are found, the bid manager selects a merchandise item to process and queries the bid database for bids for this items);

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accepting a bid from an online bidder in the online environment reflecting the online bidder's maximum proxy price (see., col 8, lines 61-67, specifically wherein it is stated that the auction manager will increase the bid as necessary up to the limit amount. The feature allows the customer to get the lowest possible price without exceeded a limit preferably. Applicant should duly note that a proxy bid or maximum proxy bid is a special bid type that allows auction manager to automatically bid on the bidder's behalf up to a limited amount established by the bidder when his or her initial bid is placed ); and

bidding on behalf of the online bidder against one or more bidders that are participating in the in-person auction based upon the maximum proxy price (see., col 8, lines 56-67, col 9, lines 1-6, specifically wherein it is stated that a proxy bid is a special bid type that allows auction manager to automatically bid on the bidder's behalf up to a limited amount established by the bidder when his or her initial bid is placed).

**It is to be noted that Fisher** does not explicitly disclose that his auction is a live auction. However, **Cooper** discloses bidders from remote bid against participant in a live auction (see., page 1, paragraph 9-10) . Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the online bidding auction of **Fisher** by including the live auction taught by **Cooper** because such modification would provide the online bidding auction of **Fisher** with the enhanced necessary to have the benefit of broadening audience and cost saving.

**Neither Fisher nor Cooper disclose in person auction, establishing a starting bid for an item in an online environment by performing an interactive pre-auction**

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**bidding process in the online environment for a predetermined amount of time, the pre-auction bidding process including communicating the item to online users, receiving bids for the item from online bidders, and choosing as the starting bid a highest bid from the bids received.**

**Biais Bruno** discloses a daily call auction to a computerized limit order market in which trading occurs continuously from 10 AM to 5 PM. The opening price at 10 AM is determined by a call auction. **Prior to this call auction, a sequence of tentative call auctions occurs before the opening, in order to facilitate the price discovery process** (see., Biais Bruno, page 3). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of **Fisher and Cooper** by including the limitations detailed above as taught by Biais Bruno because this would provide the online bidding auction of **Fisher and Cooper** with the enhanced necessary to analyze the supply and demand of liquidity of the limit order market.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pierre E. Elisca whose telephone number is 703 305-3987. The examiner can normally be reached on 6:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 703 305-9769. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Pierre Eddy Elisca**

**Primary Patent Examiner**

**December 20, 2004**